

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

POINT BLANK BODY ARMOR, INC.

Plaintiff,

v.

ALLEN PRICE, et al.

Defendants.

Civil Action No.

MJG-01 CV-3256

RESPONSE TO DEFENDANTS' REQUEST FOR ENTRY OF DEFAULT

Plaintiff/Counterdefendant, Point Blank Body Armor, Inc. by its undersigned counsel, submits this response to Counterclaimants' Request for Entry of Default.

Counterclaimants are correct that their Motion for Leave to File an Amended Counterclaim was filed on July 2, 2002, but that the Court did not grant leave for the filing of the Amended Counterclaim until February 19, 2003. Accordingly, a responsive pleading was due on March 5, 2003.

The failure to file a responsive pleading was due to oversight on the part of Plaintiff/Counter-Defendant's undersigned counsel, who succeeded prior counsel in this case on January 14, 2003. As explained in the Declaration of Paula M. Junghans attached hereto, the file which undersigned counsel inherited from prior counsel contained an answer to the amended counterclaim which counsel mistakenly thought had been filed with the court and would be deemed filed at such time if leave to file the amended counterclaim were granted. Upon receipt of the Request for Default, counsel inspected the file and observed that that document had not been filed.

Counterclaimants are well aware that Counterdefendant contests the allegations of the Amended Counterclaim, since an answer to what is now Counts I, IV and VII of the Amended Counterclaim was filed on December 13, 2001, and since counsel for the parties have communicated about this case on several occasions since March 5, 2003, and have, by

agreement, scheduled depositions on the issues raised by the Counterclaim for May 7, 2003. Had Counterclaimants brought the lack of a responsive pleading to the attention of Counterdefendant's counsel prior to seeking an order of default, this matter could have been remedied without the intervention of the Court.

Counterdefendant's Answer to the Amended Counterclaim has been filed simultaneously with the filing of this Response. Counterclaimants have not been prejudiced by the delay in its filing and, accordingly, Counterdefendant respectfully requests that this Court deny the Request for Entry of Default and permit this case to proceed in accordance with the outstanding scheduling order.

Paula M. Junghans
(Bar No. 589)
Piper Rudnick LLP
1200 Nineteenth Street, NW
Washington, D.C. 20036
(202) 861-3905

Attorney for Counterdefendant
Point Blank Body Armor, Inc.

